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The C A S E of *Josiah Thwaites*, (only Son and Heir of *James Thwaites*, Deceased (who was Eldest Son and Heir of *William Thwaites*, Deceased) and of *Dorothy Thwaites* the Widdow of *James Thwaites*.

William Thwaites by *Frances* his Wife had Issue.

1. <i>James</i> Dead.	2. <i>Thomas</i> Dead without Issue.	3. <i>Frances</i> Wife of <i>Dey</i> living	4. <i>Martha</i> living
1. <i>Josiah</i>			

11th. and 12th. Dec. 1678.
Settlement by *William Thwaites*.

21. Aug. 1679. Deed of Appointment by *William Thwaites*.

Note, The Word *Return* shews, that the Estate was by the Settlement to go to *James*, and not to *Frances*. And unless it had been so, it was not possible for *James* to pay the 1000 l. to his Sisters.

April 1680. *William Thwaites* died.

Aug. 1680. *Frances* his Wife proved his Will, and died same month.

Octob. 21. *Thomas* died without Issue.

* Trin. Term. 1682. Bill in Exchequer by *Dey* and his Wife.

William Thwaites, by a voluntary Settlement conveyed the Mannors of *Berners Rothing*, alias *Varnish Hall* in *Essex* to Trustees, to the use of himself, for Life, remainder to *Frances* his Wife, for her Life; but subject to the paying of 50 l. to *James*, his eldest Son, during their joynt lives: And from and after the decease of the Survivor of them two, for such Estate as the said *William* should by any Writing under his Hand and Seal (executed before two Witnesses) appoint, and for want of such Appointment to the use of *Thomas Thwaites* (second Son of the said *William* and *Frances*) and of the said *James* (by the name of *James Thwaites*, eldest Son to the said *William* and *Frances*) and of their Heirs for ever, with a power of Revocation to the said *William Thwaites* and his said Wife, during their Joynt Lives.

And the same day the Deeds were executed, *William Thwaites* took one part thereof and Sealed it up, and delivered it to *Isaac Heath* one of the Trustees, to keep.

William Thwaites being at *Deal* in *Kent*, with his Ship (pursuant to the power in the said Settlement) made a Will or Deed of Appointment, all of his own Hand Writing, and Signed and Sealed, in the presence of two Witnesses, whereby he gives in these words, viz. Item, I give to my Son *Thomas Thwaites*, after the death of my Wife *Frances*, 100 l. per. annum. to be paid him out of the Rents of *Varnish Hall*, and to the Heirs of his Body; and for want of such Issue, to RETURN to my Son *James Thwaites*, and the Heirs of his Body, he paying my two Daughters *Frances* and *Martha* 500 l. a piece, out of that 100 l. a year, that he enjoys by the death of my Son *Thomas*: and my Son *James* to pay this 1000 l. to my two Daughters, within two years after the death of my Son *Thomas*.

William Thwaites was slain in fight with the *Turks*, about April 1680. And in August 1680. *Frances*, his Widow and Executrix, prov'd his Will; being the Will or Writing of Appointment aforesaid, and he died in the same month, and about October 1681, *Thomas Thwaites* died without Issue, and *Frances* living in the house with her Mother, till her death, and having all the Writings in her Custody, she, after her Mothers death, married *Dey*, an Attorney at Law.

* Then *Dey* and his Wife exhibited a Bill in the Exchequer against *James Thwaites* (then an Infant) and against the Trustees, and having all their Writings in their Custody, suggested, That by the Settlement dated December 12. 1678. The Remainder of the Lands in question, after the Death of *William Thwaites* and his Wife (without any Appointment made by *William*) were limited to the use of *Thomas*, the youngest Son, and her, the said *Frances*, the eldest Daughter, (then the Wife of the said *Dey*) and their Heirs; and that after the Execution thereof the same Deed was raised, and the name of *James* (the eldest Son) put instead of *Frances*.

That the Defendants to that, Bill denied upon Oath, that the Deed was raised after it was executed, and Mr. *Heath*, the Trustee proves it was not altered after it was delivered to him by *William Thwaites*, Seal'd up; and that *William Thwaites* brought the Deed from the Temple, immediately after the Sealing, and delivered it to the said Mr. *Heath*, without going home with it. And it appeared by the Deed, that in the Engrosment, there was a blank left for the date, and that the Hand and Ink in the rasure was the same that filled up the date: And altho' there was not any proof that the Deed was razed after the Execution thereof, nor was there produced any other part of the Settlement differing from it, and tho' the Trustee was proved to be a Man of unquestionable Honesty, and did swear that it was not opened from the time that it was delivered to him by *William Thwaites*, till after his death, yet the Court directed a Tryal whether it were raised after the Execution or not: And on producing the first draught of the Deed, by the Council that drew it, which it seems remained as at first drawn, and was omitted to be rectified, and made to agree with the Engrosment of the Deeds, when, by agreement of the parties it was afterwards directed to be altered, and was accordingly executed. The Jury, without any actual proof, presumed a rasure after the Execution, and thereupon the said *Dey* and his Wife obtained a Verdict and Decree for the possession of the Estate, and to hold the same against *James Thwaites*, and all claiming under *William Thwaites*, and a perpetual Injunction against *James*, and that *James*, when he came of Age, should convey the Estate to *Dey* and his Wife, and under this Decree, *Dey* and his Wife enjoyed the Estate for several years.

That *James Thwaites* being come of Age, and being advised that the Decree was erroneous, and that altho' the Will or Deed of Appointment of his Father was not put in Issue in the Cause in the Exchequer, yet he was by that Decree also deprived of the Estate that was thereby limited to him, which he would be entitled unto, altho' the first deed of Settlement had really been raised (as *Dey* and his Wife would have it) Appealed to the most Honourable House of Lords, who revers'd the said Decree of the Exchequer, to the intent the said *James Thwaites* might have a new Tryal at Law, if he thought fit.

Thereupon *James Thwaites* brought an Ejectment for trying of his whole Title to the Lands.

But *Dey* served his Attorney with the Injunction granted by the Decree (so reversed by the Lords) as if the same had been in force, and prevented the Tryal.

* *James Thwaites* moved the Court of Exchequer that he might proceed in his Ejectment, but they would make no Order therein.

Then *Martha Thwaites* (Sister to *James*) for non payment of the 500 l. given her by the Will or Deed of Appointment, obtained a Decree in Chancery, to be paid what was due thereby to her out of the Land, which Decree was affirmed by the Lords in Parliament, upon an Appeal brought by *Dey* to reverse the same, and took possession of the Land, and is yet in possession thereof. And altho' by the same Deed of Appointment 100 l. per. annum. is also limited to *James*, and the Heirs of his Body, yet by the Exchequer Decree (the Deed of Appointment being concealed by the contrivance of *Dey*.) He, the said *Dey* was to enjoy the Estate against *James Thwaites*, and all claiming under *William Thwaites*; and *James Thwaites*, when he came of Age, was to convey the Lands in question to *Dey*.

That *Martha Thwaites* continuing in the possession, and *James Thwaites* being obstructed by *Dey* from trying his Title on the whole Case, and being beyond the Seas, and *Dey* having (as is pretended) Mortgaged the Estate in question (with other Lands) to the Lady *Bridgman's* Trustees. They Petitioned the Right Honourable the Lords in Parliament, that *James Thwaites* might try the Cause on the former Issue; and it was Ordered, That the Tryal should be had within a year then next, by which time it was supposed *James Thwaites* (who was then in *India*) would have come back; but the said *James Thwaites* died in his Voyage coming home, leaving a Widow and three Children, and now the Lady *Bridgman* and her Trustees, and *Dey*, have Petitioned the Right Honourable the Lords, that the Decree in the Exchequer may be affirmed, who have pleased thereupon to Order, that one Council for the Petitioner, and one Council for *James Thwaites* be heard upon the subject matter of the said Petition.

Its humbly hoped, since the said *James Thwaites* is dead, and the Decree in the Exchequer is reversed for being Erroneous, and made on part of the Case only that it shall be put in some way, that the Title of the said *James Thwaites* deceased, descended upon his eldest Son, who is an Infant, shall be tried on his whole Case, especially since the Judgment of the Lords in the Case of *Martha Thwaites*, has affirmed the Deed of Appointment, which was by the practice of *Dey* concealed in the Cause in the Exchequer.

The Lady *Bridgman* and her Trustees were no Parties to the Decree in the Exchequer, and not properly as is humbly conceived, entitled to any Appeals, and if they lent any Money upon the Estate in question (as is now pretended) it was on a litigated Title, and under an erroneous Decree, that could not stand, it being to bind an Infants Inheritance, without giving a Day to shew cause when he came of Age.)

And in truth, the Lady *Bridgman* hath other Lands in her security in *Norfolk*, and *Essex*; and tho as it is pretended she lent her first money in 1685. and that no Interest has been ever since paid her, yet she hath not been pleased to enter upon any of the Mortgaged Premises (but suffers *Dey* to continue in possession of the same.)

Note, It is alledged in the Petition of Dey, that one Jonathan Ball a Witness for James Thwaites, at the Tryal was Convicted, and stood in the Pillory for Perjury, committed in the Evidence he gave on James Thwaites behalf.

This was a Contrivance of Deys, for Ball was a Confederate with him, and was not a Witness for James Thwaites, either in the Cause in the Exchequer, or the Tryal, but being Privy to some of Deys practices, Dey got him convicted by surprise, to take off his Evidence, lest he should have discovered them.

Tho. Powys